HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. V.SEETHAPATHY

WRIT PETITION No. 14485 OF 2003

Between:

Modukuru Sri Raghuram

……Petitioner

And

Government of Andhra Pradesh,
Rep. by its Secretary to School Education,
A.P., Hyderabad and four others

……Respondents

:: ORDER ::

Counsel for the Petitioner : Sri K.K.Chakravarthy

Counsel for Respondent Nos.1 and 2: Government Pleader for School Education

Counsel for Respondent Nos.3 to 5 : None

Dated: 07-08-2006

Per G.S. SINGHVI, CJ

In this petition, the petitioner has prayed for quashing the decision contained in letter dated 18-3-2003 whereby Secretary to Government, Education (SE) Department rejected his claim for pension. He has further prayed for issue of a mandamus to the State Government and District Educational Officer, Guntur to pay him pension with retrospective effect along with arrears.

The factual matrix of the case which is discernible from the affidavit of the petitioner and the record made available by the learned Government Pleader for School Education shows that the petitioner joined service as teacher of S.H. Elementary School on 04-07-1955. He disappeared from the school on 12-6-1975 and remained in oblivion for the next almost 24 years. In 1999, he manipulated issue of letter dated 25-2-1999 under seal and signature of the Manager of S.H. Elementary School, Railpet, Bapatla to show that his pension papers had been forwarded to District Educational Officer, Guntur. After some correspondence with the authorities of the Education Department, he filed Writ Petition No.4153 of 2000, which was dismissed by the learned Single Judge vide his order dated 6-11-2002. The relevant extracts of that order are reproduced below:

> "It is not in dispute that the qualifying service for grant of pension is 20 years, but the particulars furnished by the petitioner in the affidavit filed in support of the writ petition discloses that he served only for a period of 19 years 11 months and 9 days, which means that he had fallen short of some days to complete the qualifying service.
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> The learned counsel for the petitioner submits that the absence of the petitioner from 1975 can be condoned on an application. Except the said averment, no such application seeking condonation of his absence is pressed into service. The learned counsel for the petitioner further submits that as per Rule 21 of the Andhra Pradesh Revised Pension Rules, 1980, the petitioner can be granted extraordinary leave.
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> A perusal of Rule 21 of the Andhra Pradesh Revised

Pension Rules, 1980, would disclose that in the present fact-situation, an individual, like the petitioner, would be entitled to grant of pension only when extraordinary leave is granted. In the instant case, neither any extraordinary leave was granted to the petitioner nor did he make any application in this regard to the authorities concerned.

The learned counsel for the petitioner further submits that under G.O.Ms.No.224 Finance & Planning Department, dated 28-08-1982, the petitioner can file an application to condone the delay before the District Educational Officer. Apparently, that is also not done by the petitioner.

It is evident from the basic facts and material on record that the petitioner had abandoned the services and that he did not submit any application seeking leave for any reason. Therefore, I do not find any good ground to entertain this writ petition and the same is liable to be dismissed.

However, since the grievance of the petitioner is that the District Educational Officer, the 2nd respondent, without considering all these aspects with regard to condonation of delay, returned the pension papers, if the petitioner feels that he is entitled to have his case considered for grant of pension under any of the Rules in force, needless to state that he is at liberty to seek the aid of those enabling provisions and obtain appropriate orders from the concerned/competent authorities in that behalf."

By taking cue from the observations made in the concluding paragraph of the above reproduced order, the petitioner represented for re-consideration of his claim for grant of pension in terms of G.O.Ms.No.224, dated 28-8-1982, but the same was rejected by the State Government vide letter dated 18-3-2003.

In the affidavit filed by him, the petitioner has heavily relied on letter dated 28-12-2002 written by District Educational Officer, Guntur to the Secretary to Government, Education Department, Andhra Pradesh and averred that in terms of the provisions contained in Andhra Pradesh Revised Pension Rules, 1980 (for short, 'the Rules'), he is entitled to extra-ordinary leave up to a period of 36 months and if that period is added to his qualifying service, he becomes entitled to

pension. In paragraphs 2 and 12 of his affidavit, the petitioner has made some interesting averments. For the sake of reference, the same are reproduced below:

> "2. I submit that I have joined as Teacher on 4-7-1955 and worked till 12-6-1975 i.e., in total 19 years 11 months 9 days and due to ill-health went on long leave on loss of pay and the leave application was handed over to the then Manager of the 4th respondent school as per rules. It appears that the then Manager did not bring this fact to the notice of the then Dy. Inspector of Schools, Urban Range, Guntur owing to the strained relationship with the petitioner. As a result, the Dy. Inspector of Schools, Urban Range, Guntur, has written in the Service Register of the petitioner stating that the petitioner has stayed away from duty. It is incorrect."
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> 12. The 1st respondent herein in the impugned Memo dated 18-3-2003 observed that the individual has not reported to duty prior to his superannuation date after remaining absent from duty with effect from 12-6-75 and the above instructions are not applicable to the case on hand. But it is incorrect. My case is that the then management is no other than my mother-in-law as such due to personal grudges she failed to make entries. In the previous occasions also the management made such irregularities and the DEO, Guntur passed proceedings No.58/A6/66 dt.7-8-70 instructing the management to reinstate me treating my absence as leave. Therefore, my case is genuine. Even at the time of sanction proceedings for pension, the DEO ought to have directed the management to make entries with regard to the period. But it was not done so. Further I submit right from 1976, I am demanding the management, 4th respondent for my pension and it was postponed without any action till 1999 by the management which was also known to the DEO, Guntur. Lastly in the month of August, 1999, the DEO obtained a proposal from the management and by proceeding Rc.7701/C4/99 sanctioned my pension and family pension and submitted the proposal to AGAP, Hyderabad. At that time the DEO ought to have noticed the deficiency if any and would have got it rectified by calling the management. Therefore, it is a lapse on the part of the DEO

for which I should not be suffered. The observation of the 1st respondent Government that I have not taken any action during the year 1975 is illegal. In fact, I am persuading the same with the management the 4th respondent herein from my regularization of my service and pension. Therefore, the Rule 27 (1) of the A.P. Revised Pension Rules, 1980 does not apply and basing on the clarification issued in G.O.No.224, (F & P) dated 28-8-1982 will apply. Further, under Rule 27 Clause (2) my period of absence can be treated as extraordinary leave and entry can be made accordingly by the respondents 2 & 4 and the pension papers can be submitted to the AGAP 3rd respondent herein for sanction of my pension and family pension. Hence the petitioner prays the Hon'ble Court to consider his case sympathetically by directing the respondents 1 to 3 to sanction the pension eligible to him including the family pension."

In the counter-affidavit filed by Shri V. Rangacharlu, District Educational Officer, Guntur, it has been averred that the petitioner had stayed away from duty with effect from 12-6-1975. He is said to have submitted pension papers in 1999 which were received by the Accountant General, Andhra Pradesh, sometime in August, 1999. The latter returned the papers by observing that the petitioner is not eligible for grant of pension. The representation made by the petitioner in furtherance of order dated 6-11-2002 passed by the High Court was considered by the competent authority and rejected by assigning cogent reasons.

Learned counsel for the petitioner argued that notwithstanding the long time gap of 24 years between the date when his client is said to have gone on long leave due to illness and the making of application for grant of pension, the Court should direct the respondents to entertain his claim and pay him arrears of pension at least from the date of his deemed superannuation i.e., 30-04-1994 because by letter dated 28-12-2002, District Educational

Officer, Guntur had unequivocally recommended his case. Learned counsel further argued that even if the petitioner is not treated eligible for grant of pension, he should be deemed to have voluntarily retired from service with effect from 12-6-1975 and his case for grant of pension should be considered on that basis.

Learned Government Pleader countered the aforementioned submissions of the learned counsel for the petitioner and argued that even though the Liberalised Pension Rules were made applicable to the teachers of the local bodies and aided schools vide G.O.Ms.No.1132, dated 16-11-1975, the petitioner is not entitled to get pension because he had abandoned the service in 1975. Learned Government Pleader emphasised that after disappearing from the scene in June 1975, the petitioner did not report for duty till 1994 when he would have superannuated and, therefore, no illegality was committed by the government by refusing to entertain his claim for pension. He then argued that in view of Rule 27 (1) of the Rules, the past service of the petitioner will be deemed to have been forfeited and, therefore, he cannot be treated eligible for pension.

We have thoughtfully considered the respective arguments. Though, delay by itself is not sufficient to decline relief to a retired employee who comes up with the prayer for grant of pension and other retiral benefits, and the Court can settle the equity by limiting the payment of arrears for 38 months if the claim of the employee is found to be genuine and is supported by the rules, but in the facts and circumstances of the case, we have not at all felt persuaded to entertain the petitioner's prayer for quashing communication dated 18-03-2003 issued by the State Government or to direct respondent Nos.1 and 2 to pay pension to him.

The petitioner's assertion, as contained in paragraph 2 of his affidavit that after 19 years 11 months and nine days of service, he

proceeded on long leave on loss of pay and the leave application was handed over to the manager of the school, has remained unsubstantiated inasmuch as copy of the application allegedly made by him to the manager of the school has not been placed on the record of the writ petition. We may have overlooked even this lacuna but the absence of any contemporaneous evidence to show that the petitioner was ill for over 23 years and the fact that he did not bother to inform either the management of the school or any functionary of the government about his inability to join duty militates against the bona fides of his claim.

We are further of the view that the petitioner's failure to report for duty resulted in forfeiture of his past service in terms of Rule 27 (1) of the Rules and, therefore, his claim for pension was rightly rejected by the State Government.

During the course of hearing, we enquired from the learned counsel for the parties as to how the Manager of S.H. Elementary School, Railpet, Bapatla could forward the so-called pension papers of the petitioner in February 1999 when the school had been taken over by the Municipal Administration Department in 1979, but neither of them could offer any explanation. This shows that the petitioner's claim for grant of pension is not based on genuine document.

The oral submission made by the learned counsel that his client had sought voluntary retirement is being mentioned by us for the purpose of rejection. If there was any semblance of credibility in this submission of the learned counsel, the pleadings of the two petitions would have contained at least an oblique reference to the petitioner's application for voluntary retirement. However, the fact of the matter is that both the petitions are conspicuously silent on this issue. It is, therefore, reasonable to presume that this plea has been raised as an after thought.

For the reasons mentioned above, the writ petition is dismissed.

We would have saddled the petitioner with costs, but keeping in view his age, we refrain from doing so.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

04-08-2006
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